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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,418	09/17/2001	Stephen F. Gass	SDT 329	1667

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EXAMINER

DRUAN, THOMAS J

ART UNIT	PAPER NUMBER
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3724

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DATE MAILED: 05/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/955,418

Applicant(s)

GASS, STEPHEN

Examiner

Thomas J. Druan, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7 & 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 & 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,637,289 to Ramsden.

Ramsden discloses the invention as claimed including an up-cut chop saw, comprising: a frame 2 having a surface 18 adapted to support a workpiece; a rotatable blade 70 on spindle 14 configured to cut workpieces by moving from below the surface of the frame to at least partially above the surface of the frame (column 2, lines 55-58); at least one motor 10 configured to drive the blade; at least one actuating mechanism 28, a fluid-actuated cylinder, operable to move the blade upward at least partially above the surface of the frame and also downwards after the blade has been moved above the surface of the frame; a detection system 62 configured to detect one or more dangerous

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conditions between a user and the blade; and a reaction system 124 configured to stop the upward motion of the blade and to retract the blade below the surface of the frame upon detection of a dangerous condition by the detection system.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsden in view of US 3,946,631 to Malm.

Ramsden discloses the invention as claimed, but does not disclose a brace member and a brake mechanism configured to engage the brace member to stop upward motion of the blade. Malm teaches the use of brace member 308 that is engaged by brake mechanism 306 to apply pressure on brace member 308 to stop upward motion of the blade and to move the blade away from the cutting zone. It would have been obvious to one skilled in the art to use the brace member and brake mechanism of Malm with the device of Ramsden in order to stop upward motion of the blade and to move the blade away from the cutting zone.

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6. Claims 2, 15-17, 20 & 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsden in view of Malm and US 4,117,752 to Yoneda.

Ramsden discloses the invention substantially as claimed, but lacks detection means to detect contact between a user and the blade. Malm teaches the use of a saw that uses a fluid-actuated cylinder 64 controlled in conjunction with an electrical switch 84 that is used to lower blade 56. Yoneda teaches the use of a detection device that is used in conjunction with a rotatable blade 14 whereupon contact between a user and the blade will trigger a reaction system in order to prevent or reduce injury to the user. It would have been obvious to include the electrical switch of Malm to lower the blade of Ramsden upon detection of contact between a user and the blade of Ramsden as taught by Yoneda in order to prevent or reduce injury to the user.

7. Claim 18-19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsden in view of Malm and Yoneda.

Ramsden in view of Malm and Yoneda disclose the invention substantially as claimed, but use pneumatic cylinders as opposed to hydraulic cylinders. The examiner takes Official Notice that it would have been obvious to replace the pneumatic cylinders of Ramsden in view of Malm and Yoneda with hydraulic cylinders and a corresponding control system since hydraulic cylinders are generally more powerful than pneumatic cylinders and can lift heavier cutting apparatus.

8. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsden in view of Malm and Yoneda in further view of US 3,785,230 to Lokey.

Ramsden in view of Malm and Yoneda discloses the invention substantially as claimed but lacks a spindle that is electrically insulated from the frame, thereby also insulating the blade from the frame. Lokey teaches the use of a blade 13 held on insulating washers W that insulate the blade from the frame in order to isolate the blade electrically from the frame. It would have been obvious to one skilled in the art to use the insulating washers of Lokey with the device of Ramsden in view of Malm and Yoneda in order to electrically isolate the blade from the frame so that the detection system will detect only when contact is made between the user and the blade and not when the user contacts the frame.

9. Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsden in view of Malm in further view of US 5,025,175 to Dubois III (hereinafter Dubois).

Ramsden discloses the invention substantially as claimed including a guard structure 16, but lacks detection means to detect contact between a user and any portion of the frame, including the guard and a slot through which the blade is raised. Malm teaches the use of a saw that uses a fluid-actuated cylinder 64 controlled in conjunction with an electrical switch 84 that is used to lower blade 56. Dubois teaches the use of a cutting device with a detection system and reaction system, the detection system configured to detect contact between a gloved hand of a user and any portion of

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a frame of the cutting device and to signal the reaction means to initiate a safety mechanism (column 2, lines 38-45). It would have been obvious to one skilled in the art to use the electrical switch of Malm in order to control the cylinder of Ramsden upon receiving a signal from the detection system of Dubois after contact between a user and any portion of the frame of Ramsden, including the guard or slot, in order to stop the upward motion of the blade and to move the blade away from the cutting area.

10. Claims 21 & 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsden in view of Malm and Yoneda in further view of Dubois.

Ramsden in view of Malm and Yoneda disclose the invention substantially as claimed including a guard structure 16, but lacks detection means to detect contact between a user and any portion of the frame, including the guard. Dubois teaches the use of a cutting device with a detection system and reaction system, the detection system configured to detect contact between a gloved hand of a user and any portion of a frame of the cutting device and to signal the reaction means to initiate a safety mechanism (column 2, lines 38-45). It would have been obvious to one skilled in the art to use the electrical switch of Malm in order to control the cylinder of Ramsden upon receiving a signal from the detection system of Dubois after contact between a user and any portion of the frame of Ramsden, including the guard, in order to stop the upward motion of the blade and to move the blade away from the cutting area.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 1, 15 & 23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 31 of copending Application No. 09/676,190. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in claim terminology but encompass the same subject matter.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Druan, Jr. whose telephone number is 703-308-4200. The examiner can normally be reached on M-F (8:30-6:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

ag09
tjd

May 19, 2003


BOYER ASHLEY
PRIMARY EXAMINER